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Attorney for Plaintiff

**UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION**

In Re:

Case No. 04-47072-DML-11

JRL PROPERTIES INTERNATIONAL, INC.,

Debtor.

Chapter 11
 (Pending in the United States Bankruptcy Court for the
 Northern District of Texas, Fort Worth Division)

MICHAEL R. ALLEN,

Plaintiff,

v.

J. CRAIG HAMILTON, JR., individually and as
 Trustee of PLEXCO TRUST, JOHN D. FARRALD, as
 Trustee of PLEXCO TRUST, PLEXCO TRUST, a
 California Trust, JRL PROPERTIES, INC., a Texas
 corporation, and DOES 1-10, Inclusive,

Defendants.

Case No. C07-03382-PVT

**DECLARATION OF J.A. HUDSON IN SUPPORT OF
 MOTION FOR RELIEF FROM DEFAULT AND TO
 ALLOW RESPONSE TO COUNTER-CLAIM AND
 MOTION FOR RELIEF FOR FAILURE, IF ANY, TO
 COMPLY WITH FEDERAL RULE OF BANKRUPTCY
 PROCEDURE, RULE 9027(e)(3)**

Date: September 18, 2007

Time: 10:00 a.m.

Judge: The Honorable Magistrate

Patricia V. Trumbull

Courtroom 5, Fourth Floor

J.A. HUDSON, UNDER PENALTY OF PERJURY, DECLARES AS FOLLOWS: I AM
 COMPETENT TO TESTIFY AND WOULD, IF SWORN, AND DO TESTIFY AS FOLLOWS:

1. I am an attorney duly licensed to practice law before the United States District
 Court for the Northern District of California and am counsel for Plaintiff, MICHAEL R. ALLEN.

1 2. On or about June 27, 2007, Plaintiff was served by mail with a voluminous group
2 of documents, including, but not limited to, Notice of Removal of Action Pursuant to 28 USC
3 Sections 1334, 1452(A) and Bankruptcy Rule 9027.

4 3. At the back of this voluminous group of papers was a document entitled
5 “Defendants’ Original Answer, Affirmative Defenses and Counter-Claims.” That document was
6 previously filed with this Court as a PDF document. Attached as Exhibit “A” is our proposed
7 Response to Counterclaim.

8 4. In reading over the caption to the complaint, there is nothing in the caption to
9 indicate that PLEXCO TRUST, J. CRAIG HAMILTON, JR. and JOHN D. FARRALD as Trustee
10 of PLEXCO TRUST, and PLEXCO TRUST are counter-claimants or counter-plaintiffs. There is
11 nothing in the Original Answer which sets forth a case number other than the Bankruptcy Court
12 case in Texas.

13 5. My primary concern at the time I received the voluminous paperwork was that the
14 Defendants had improvidently removed this case to this Court from the Monterey County
15 Superior Court. On July 26, 2007, Plaintiff filed a Motion to Remand the Case to the State
16 Court, thus calling the jurisdiction of this Court into question.

17 6. Due to inadvertence and mistake, I read part of the Original Answer and
18 concluded that the remainder of the document would contain nothing more than additional
19 affirmative defenses.

20 7. Since there is no counter-claim in the state court, and since the equivalent of a
21 counter-claim, a cross-complaint, must be filed by way of a separate pleading in the state court,
22 I was unaware that the counter-claim which was filed as part of the same pleading denominated
23 “Answer” needed to be answered by the Plaintiff when he is not named as a counter-defendant.

24 8. Thus, I was entirely surprised when I received a filed-stamped “default entered”
25 with a date of August 9, 2007 for the Request for Entry of Default, which was previously filed
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1 with this Court by the Defendants. The Request for Entry of Default which I received purports
2 to contain a Declaration of Lisa D. Olle, which was never served on me, and the Request for
3 Entry of Default does not show that it was served on me by mail or otherwise, although the
4 Defendants have been aware for months that I am attorney of record in this matter.

5 9. There will be no prejudice whatever to the Defendants if the entry of default is set
6 aside. There is no judgment taken in this case and, in fact, the jurisdiction of this Court is to be
7 resolved on September 18, 2007.

8 10. Further, in the event the Court rules – properly, Plaintiff believes – that the case
9 was improvidently removed to the Federal Court and it is remanded to the state court, there is
10 no counter-claim in the state court.

11 WHEREFORE, I RESPECTFULLY PRAY that the Court set aside the Entry of Default,
12 relieve the Plaintiff from default, and allow Plaintiff to file his answer to the Counter-Claim,
13 Exhibit “A” attached hereto.

14 Executed on August 17, 2007. I declare under penalty of perjury under the laws of the
15 United States of America that the foregoing is true and correct.

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19 J.A. HUDSON, Declarant
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